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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,972	09/19/2003	Robert A. Walker	CU-3631	7885
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26530	7590	06/28/2005
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EXAMINER

QIN, JIANCHUN

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,972

Applicant(s)

WALKER ET AL.

Examiner

Jianchun Qin

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 is/are allowed.
- 6) ☒ Claim(s) 1-3&5-11 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following minor informalities: reference character(s) not mentioned in the description:

With respect to Fig. 4, the numeral referencing the mating channel 30 is not readable.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 2837

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6, 7, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

Claims 6 and 7 recite the limitation "said channel" in line 3 of claim 6. There is insufficient antecedent basis for this limitation in the claim.

Claims 10 and 11 recite a method of mounting a swell pedal to an organ. However, it is not clear how the swell pedal recited in the claim's preamble is related to the body of the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Pfaffenberger et al. (U.S. Pat. No. 6426619).

With respect to claim 1:

Pfaffenberger et al. teach an expression shoe comprising: a pedal (col. 3, lines 48-51); a base (col. 3, lines 34-38); bearing means rotatably connecting said pedal to said base (col. 3, lines 54-55; col. 4, lines 3-5); sensor means for producing a sensor signal corresponding to a rotational position of said pedal with respect to said base (col. 4, lines 31-34 and lines 40-44); said sensor means comprising a hall-effect sensor mounted to one of said pedal and said base and magnetic field producing means mounted to the other of said pedal and said base for producing a linear output signal in response to movement of said pedal relative to said base (col. 4, lines 7-11, lines 21-30, lines 31-34 and lines 40-44).

With respect to claims 2-3 and 5:

Pfaffenberger et al. also teach: said bearing means includes adjustment means for adjusting resistance to rotational movement of said pedal with respect to said base (cols. 3-4, lines 67-3); said base comprises an extrusion (Fig. 1, #20); said magnetic field producing means comprises a pair of spaced apart permanent magnets (Fig. 2, #62).

With respect to claim 8:

Claim 8 recites an intended use of the method taught by Pfaffenberger et al. for an organ. It has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference

Art Unit: 2837

as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

With respect to claim 9:

The teaching of Pfaffenberger et al. further includes: the step of producing comprises rotating a magnetic field producing means relative to a Hall effect sensor in response to rotation of said pedal relative to said base (col. 4, lines 7-11, lines 21-30, lines 31-34 and lines 40-44).

6. Claims 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Mathews (U.S. Pat. No. 4306697).

Mathews teaches a supporting base (see Fig. 1) comprising: a U-shaped portion having an open end (Fig. 1, #20), and two feet oppositely outwardly of sides of a channel at said extending open end (Fig. 1, #13 and #15).

Claim 6 further recites an intended use of the supporting base taught by Mathews for an expression shoe. It has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

The teaching of Mathews further includes: said U-shaped portion and said feet are integrally formed as a single extrusion (see Fig.1).

Allowable Subject Matter

7. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 12 is allowed.

Reasons for Allowance

8. The following is an examiner's statement of reasons for allowance:

The primary reason for the allowance of claim 4 is the inclusion of the limitation that: said base includes a generally inverted U-shaped channel and a pair of feet extending oppositely outwardly of said channel for accommodating two or more different mounting configurations. It is this limitation found in the claim, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes this claim allowable over the prior art.

The primary reason for the allowance of claim 12 is the inclusion of the claimed method steps of: the control system recording the movement of said expression pedal from its full open position to its full closed position; and the control system recording values corresponding to said full open and full closed positions and calculating a proportional output signal. It is these limitations found in the claim, as they are claimed

Art Unit: 2837

in the combination that has not been found, taught or suggested by the prior art of record, which makes this claim allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Prior Art Citations

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) Nakada et al. (U. S. Pat. No. 3558793) is directed to an expression pedal assembly for an electronic music instrument.

Contact Information

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jianchun Qin whose telephone number is (571) 272-5981. The examiner can normally be reached on 7am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

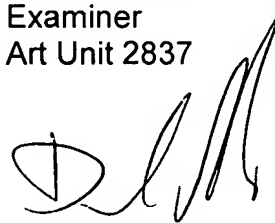
Art Unit: 2837

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JQ

June 23, 2005

Jianchun Qin
Examiner
Art Unit 2837



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